



family flyer

Michael Lynch
Family Lawyers

Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- Recent News - Freedom of Movement
- Child Maintenance
- Contact - Relevant Factors
- Parenting Plans and Child Support
- Child Maintenance - Assessment
- Payment for Family Court Services
- Maintenance Applications
- Property Legislation Amendment - Update

RECENT NEWS - FREEDOM OF MOVEMENT

You will probably have noticed from recent issues of the "Flyer", that cases which involve the "proposed" relocation by a parent with Residence of a child arise quite frequently in the Family Court.

"Freedom of Movement" cases were recently considered in detail by the Full Court of the Family Court.

The decision of the Court received significant media exposure. The case in question involved a mother with children, who sought to relocate from North Queensland (where the father resided) to Victoria. The Trial Judge allowed the mother to relocate and the Full Court supported this decision.

The decision was significant in light of the recent *Family Law Act* changes, accordingly the Full Court sought submissions during the case, from the Attorney-General, Mr Williams.

The Court's Judgment is extensive and we will provide a more detailed explanation of the Judgment in future issues of the "Flyer".

CHILD MAINTENANCE

The law provides for child support to continue until a child is 18 years of age or financially independent.

The Family Court may make a Child Maintenance Order in relation to a child over the age of 18 years in "special circumstances", usually where the child requires ongoing financial assistance and is involved in a course of ongoing study.

The Family Court recently held that an intellectually and physically disabled adult child was not entitled to maintenance as she had failed to establish to the Court that she had made every endeavour to find appropriate gainful employment. The Court refused the child's mother's Application for the father to pay maintenance for the child.

CONTACT - RELEVANT FACTORS

The Full Court recently stated in a Judgment concerning the issue of Contact that the reference to the "child's right", that is, to know and be cared for by both parents and the "child's right" to have contact on a regular basis with both parents, should not be seen as detracting from the long established principle that in deciding what parenting Order to make the "child's best interests" must be regarded as the paramount consideration.

PARENTING PLANS AND CHILD SUPPORT

Following recent amendments to the *Family Law Act*, Parenting Plans may now include Child Support provisions.

CHILD MAINTENANCE - ASSESSMENT

In pre-Child Support Agency matters, it is necessary for the Family Court to determine the appropriate level of maintenance.





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In making this assessment the Court has recourse to publish reports on the "Costs of Children".

One such report is the "Lovering Scale" otherwise known as the "basket of goods" approach. This scale indicates how much parents would spend on their children if the children were to enjoy the "contents of the basket", e.g. food, clothing, footwear, household provisions, fuel, schooling, etc. This method does not include the child related costs of housing, transport, school fees, child care, or medical or dental expenses.

In a recent decision of the Full Court of the Family Court, it was found that the "Lovering Scale" provides only part of the costs of a child.

It was stated that the "Lee Scale", which uses an "expenditure survey approach" and is updated by use of quarterly average weekly earnings figures, measures the total amount spent on a child.

PAYMENT FOR FAMILY COURT SERVICES

As of 1st July 1997, the Government has changed the Family Law Regulations and now requires fees to be paid for voluntary counselling and mediation services provided by the Family Court.

The fees do not apply to compulsory counselling sessions, information sessions, or emergency telephone counselling.

You may apply for a waiver of the fee, if payment would cause financial hardship

The new fees are as follows:

- (i) Counselling - \$30.00 a session, for each adult.
- (ii) Mediation - \$50.00 a session, for each adult..

MAINTENANCE APPLICATIONS

Amendments have been made to the Family Court Rules in relation to Maintenance Applications. These were previously commenced by way of a Form 12, "Application" and can now be commenced in conjunction with a Property Application in a Form 7, "Application".

It is the Court's hope that this should avoid the existing situation where two separate Applications are made and where two separate Court dates are allocated where there is a claim for both Property Settlement and Spousal Maintenance.

PROPERTY LEGISLATION AMENDMENT - UPDATE

Recent indication from the Government, is that the Family Law Property legislation remains under "active consideration" by the Attorney-General and a consultative process should begin in the near future. The Attorney-General hopes to include Superannuation in the proposals for consideration.

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